

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.10056 OF 2020

Transport & Dock Workers Union & Anr. .. Petitioners
Versus
Union of India & Ors. .. Respondents

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Mr.K.P.Anilkumar a/w Ms.Priyanka Kumar for the Petitioners.
Mr.Nand Kishore for Respondent No.2.

**CORAM: S.S.SHINDE &
MANISH PITALE, JJ.**

DATED : 13th JANUARY, 2021

PC:-

1. The learned counsel appearing for the petitioners prays leave to amend the petition so as to implead Ministry of Ports, Shipping and Waterways as party respondent. Leave granted. Amendment be carried out forthwith.
2. Issue notice to the respondents returnable on 9th February, 2021. In addition to service of notice through Court, the Petitioners shall serve a private notice by Registered Post A.D. and/or by Courier service and/or hand delivery or by e-mail/fax on the respondents and shall file affidavit of service with tangible proof before the returnable date.

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3. In the meantime, it will be open to the respondents to file the affidavit in replies.

4. So far as prayer for ad-interim relief is concerned, the petitioners have placed reliance upon the order passed by the High Court of Karnataka at Bangaluru in case of ***Bharat Electronics Workers Union Vs. Union of India and Ors.*** [Writ Petition No.15361/2020 (L-RES)] and submitted that ad-interim relief may be granted in terms of prayer clause (D) to the extent of applicability of the Memorandum and Circular mentioned in prayer clause (D) to the workmen. The prayer is vehemently opposed by the learned counsel appearing for the second respondent. He submits that the Memorandum and Circular is applicable even to the Class III and Class IV employees.

5. The High Court of Karnataka at Bengaluru in the Writ Petition (supra), has passed the following order :

“Learned Senior Counsel Sri. Subba Rao, appearing for the petitioner-Bharat Electronic Workers Union, draws the attention of this Court to a decision of the Kerala High Court in the case of **FACTS Workers Organization Vs. Union of India and others** in **WP(C) No.26423/2020** decided on 17.12.2020 wherein similar office order issued by the Central Government Undertaking was clarified as applicable only to the Executives and Non-Unionized Supervisors of CPSEs and it is not application to the Non-Executives. The Officer Memorandum dated 19.11.2020 issued by the Ministry of

Heavy Industries and Public Enterprises Department of Public Enterprises, Government of India, freezing Dearness Allowance of employees of Central Public Sector Enterprises (CPSEs) is sought to be implemented by the respondent No.3- Public Sector undertaking, but is made applicable to the Non-Executives also. The Kerala High Court has recorded the submission of the Additional Solicitor General of India, who has submitted that the Office Memorandum dated 19.11.2020 is applicable only in the case of Executives and Non-Unionized Supervisors of CPSEs and it is not applicable insofar as the workmen in this enterprises are concerned.

Consequently, there shall be an ad-interim order of stay of the operation and execution of the impugned Office Memorandum dated 26.11.2020 at Annexure-C, till the next date of hearing. Pending final adjudication of this Writ Petition, the respondent No.3 is directed to ensure that the payment of the Dearness Allowance to the workers with effect from 01.10.2020 as per the Memorandum of settlement dated 28.12.2018 is made.

The amount already deducted or recovered by the respondent No.3 shall be subject to the final outcome of this writ petition.

Learned Central Government Counsel is directed to take notice for respondent Nos.1 and 2.

Issue emergent notice to respondent No.3.”

6. In the facts of the present case, till next date, we deem it

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appropriate to restrain the respondents from implementing Memorandum dated 19-11-2020 and Circular dated 07-12-2020 to the extent of its applicability to the workmen (Group 'C' and Group 'D' employees).

7. Stand over to 9th February, 2021.

(MANISH PITALE, J.)

(S.S.SHINDE, J.)